

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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BOBBY LEE FAIR, JR.,

Case No. 3:20-cv-00490-LRH-WGC

Petitioner,

ORDER

v.

LAKES CROSSING CENTER
ADMINISTRATOR, et al.,

Respondents.

Petitioner has submitted what he has styled as a pro se petition for writ of habeas corpus (ECF No. 1-1). It is handwritten on blank paper and does not substantially follow this court's required form. LSR 3-1. Moreover, petitioner has failed to submit an application to proceed in forma pauperis or pay the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00 filing fee or a completed application to proceed in forma pauperis on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate.

The court also notes that it does not appear that Fair has exhausted his claims. A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair

1 opportunity to act on each of the claims before she or he presents those claims in a
2 federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also*
3 *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the
4 petitioner has given the highest available state court the opportunity to consider the
5 claim through direct appeal or state collateral review proceedings. *See Casey v. Moore*,
6 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir.
7 1981).

8 Here, Fair appears to complain about his currently being held involuntarily at
9 Lakes Crossing, a psychiatric facility. Fair avers that he has been at Lakes Crossing
10 since about May 2020. The court takes judicial notice that Fair cannot have exhausted
11 his state remedies in such a short time period. The court also notes that Fair states that
12 he has counsel in his state-court proceedings.

13 **IT IS THEREFORE ORDERED** that the Clerk detach and file the petition (ECF
14 No. 1-1).

15 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to
16 the filing of a new petition in a new action with a properly completed application form to
17 proceed in forma pauperis.

18 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as
19 jurists of reason would not find the court's dismissal of this improperly commenced
20 action without prejudice to be debatable or incorrect.

21 **IT IS FURTHER ORDERED** that the Clerk shall ENTER JUDGMENT accordingly
22 and close this case.

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24 DATED this 24th day of September, 2020.

25
26 
27 LARRY R. HICKS
28 UNITED STATES DISTRICT JUDGE